United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:
A.P. Liquidating Co. f/k/a Apex
Global Information Services, Inc.,
Debtor.
_____/

Case No. 00-72839-R
Chapter 11

McTevia & Associates, Inc., as
Liquidating Agent of A.P. Liquidating
Co. f/k/a Apex Global
Information Services, Inc.,
Plaintiff,

V.

Adv. No. 02-4559

Qwest Communications
Corporation,
Defendant.
_____/

Opinion Regarding Defendant's Motion to Strike Jury Demand

This matter is before the Court on a motion by the defendant, Qwest Communications Corporation, to strike the plaintiff's jury demand. Qwest asserts that the plaintiff is not entitled to a jury trial because this lawsuit is part of the claims resolution process. McTevia & Associates, Liquidating Agent, asserts that the lawsuit is not a part of the claims resolution process and that it is entitled to a jury trial. For the reasons stated herein, the Court concludes that the plaintiff has no right to a jury trial and the motion should be granted.

I.

On March 29, 2002, the Official Unsecured Creditor's Committee of A.P. Liquidating Co.

and McTevia & Associates, filed a complaint against Qwest. The complaint alleges breach of contract, fraud and intentional interference with prospective economic relations. Further, the complaint seeks $40,000,000.00 in damages and contains a jury demand.

On May 28, 2002, Qwest filed a motion to dismiss or in the alternative for summary judgment. On October 1, 2002, the Court dismissed the lawsuit on the basis of res judicata. On appeal to the district court, the Liquidating Agent argued that res judicata did not apply because the Liquidating Agent's ability to bring the lawsuit had been preserved by virtue of its right to object to a proof of claim filed by Qwest and that this lawsuit represented an objection to the claim.

The district court agreed with the Liquidating Agent's arguments and reversed the order dismissing the case. On June 12, 2003, the district court remanded this case to the bankruptcy court.

II.

As noted, the issue is whether the Liquidating Agent is entitled to a jury trial. "The Bankruptcy Code currently provides little guidance as to when a party is entitled to a jury trial in bankruptcy matters." *Kaiser Steel Corp. v. Rial* (*In re Kaiser Steel Corp.*), 109 B.R. 968, 971 (D. Colo. 1989). "Consequently, the courts and commentators have all but ignored the statutory provisions relating to jury trials, instead resting their analysis of the right to a jury trial in bankruptcy matters on the Seventh Amendment." *Id.*

> The Seventh Amendment preserves the right to trial by jury for suits at common law, not in equity. *See Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446-47, 7 L.Ed. 732 (1830) (Story, J.). The standard test is to determine first whether the action would have been deemed legal or equitable in 18th century England, and second whether the remedy sought is legal or equitable in nature. The court must balance the two, giving greater weight to the latter. *See Granfinanciera*, 492 U.S. at 42, 109 S. Ct. at 2790.

Germain v. Connecticut Nat'l Bank, 988 F.2d 1323, 1328 (2d Cir. 1993) (citing *Granfinanciera*, *S.A. v. Nordberg*, 492 U.S. 33, 41, 109 S. Ct. 2782, 2790 (1989)).

> In *Granfinanciera* we recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of allowance and disallowance of claims, thereby subjecting himself to the bankruptcy court's equitable power. If the creditor is met, in turn with a preference action from the trustee, that action becomes part of the claims allowance process with is triable only in equity. In other words, the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's *equity jurisdiction*. As such, there is no Seventh Amendment right to a jury trial.

Langenkamp v. Culp, 498 U.S. 42, 44-45, 111 S. Ct. 330 (1990) (citations omitted). *See also Sender v. Hardie* (*In re Hedged-Investments Assoc., Inc.*), 153 B.R. 69 (D. Colo. 1993).

Courts have extended this reasoning to cases in which the debtor or trustee brings a claim against a creditor for breach of contract, so long as the "determination of the debtor's adversary proceeding is an integral part of the claims allowance process." *Frost, Inc. v. Miller, Canfield, Paddock & Stone, P.C.* (*In re Frost, Inc.*), 145 B.R. 878, 882 (Bankr. W.D. Mich. 1992). *See also Parsons v. Untied States* (*In re Parsons*), 153 B.R. 585 (M.D. Fla. 1993); *Ernst & Young v. Bankruptcy Servs. Inc.* (*In re CBI Holding Co., Inc.*), 311 B.R. 350 (S.D.N.Y. 2004).

III.

The Liquidating Agent asserts that it properly filed a jury demand and that it is entitled to a jury trial. The Liquidating Agent argues that it is "impossible as a matter of simple logic to say that this adversary proceeding involves the equitable process of allowance and disallowance of claims" because Qwest withdrew its proof of claim well before this adversary proceeding was commenced.

Qwest argues that this Court must find that this lawsuit is an integral part of the claims resolution process. Qwest asserts that the doctrine of judicial estoppel bars the Liquidating Agent from taking any position other than the one taken in the district court proceeding and relied upon by the court for its ruling. Therefore, Qwest argues the Liquidating Agent is not entitled to a jury trial.

In its appeal to the district court, the Liquidating Agent argued, "The Causes of Action Against Qwest Were Preserved in the Plan as Part of the Claim Objection Process." (Appellant's Br. to District Court at 5-7.) The district court agreed, stating:

> The language of the Order confirming the Plan, the Objections filed by the Liquidating Agent and the Order withdrawing the Proof of Claim by Qwest preserved Appellant's right to file a claim against Qwest. The Confirmation Order specifically reserved the Appellant's right to explore any Objection against Qwest's Proof of Claim, in light of the fact that Qwest's proof of claim was filed about 30 days prior to the entry of the Confirmation Order. The Confirmation Order was not a final decision on any subsequent claims filed by the Liquidating Agent. The first element to establish res judicata has not been met.

(June 13, 2003 Op. at 6-7.)

The Liquidating Agent spent several pages of its appellate brief arguing that this lawsuit was preserved as part of the objection to claims process and the district court agreed. The doctrine of judicial estoppel bars the Liquidating Agent from now arguing that this lawsuit is not integrally related to the allowance of a claim simply because Qwest has withdrawn its claim. "The judicial estoppel doctrine protects the integrity of the judicial process by preventing a party from taking a position inconsistent with one successfully and unequivocally asserted by the same party in a prior proceeding." *Reynolds v. Comm'r*, 861 F.2d 469, 472 (6th Cir. 1988) (citing *Edwards v. Aetna Life Insurance Co.*, 690 F.2d 595, 598 (6th Cir. 1982); *Patriot Cinemas, Inc. v. General Cinema Corp.*,

834 F.2d 208, 212 (1st Cir. 1987)).

Perhaps most important, the district court's opinion, quoted above, clearly concluded that the claims asserted in this suit are a part of the bankruptcy claims resolution process, and this court is of course bound by that conclusion.

Therefore, the Court must conclude that there is no right to a jury trial and the jury demand should be stricken.

_____/s/_____
Steven Rhodes
Chief Bankruptcy Judge

Entered : July 27, 2005

cc: Sheryl Toby
Robert Gordon

Not for Publication